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Supreme Court of the United States

OCTOBER TERM, 1957

No. 800

In the Matter
of the
Petition of SKIBS A/S JOLUND, in a cause of exoneration from or limitation of liability for damages arising out of a fire on board the "BLACK GULL" on July 18, 1952.

BLACK DIAMOND STEAMSHIP CORP.,
Petitioner,

vs.

AMERICAN SMELTING & REFINING COMPANY, *et al.*,
Respondents.

BLACK DIAMOND STEAMSHIP CORP.,
Petitioner,

vs.

MARIA ANGELINA VERBEECK, *et al.*,
Respondents.

No. 815

In the Matter
of the
Petition of SKIBS A/S JOLUND, as owner of the M/S "BLACK GULL" for exoneration from or limitation of liability.

SKIBS A/S JOLUND,
Petitioner,

vs.

AMERICAN SMELTING & REFINING COMPANY, ATKINSON HASEBRICK & CO., *et al.*,
Respondents,

MARIA VERBEECK, *et al.*,
Respondents.

OBJECTIONS BY RESPONDENTS TO THE MOTIONS FOR LEAVE TO FILE BRIEFS AS AMICI CURIAE IN SUPPORT OF THE PETITIONS FOR A WRIT OF CERTIORARI

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There are before the Court two motions for leave to file briefs amici curiae in support of the petitions for a writ of certiorari—one in the name of Norwegian Shipowners' Association, and the second in the name of Royal Netherlands Shipowners Association.

Rule 42 (1) of this Court states that motions for permission to file briefs amici in support of petitions for certiorari "are not favored." Rule 42 (3) provides that parties served with such motions may file objections "concisely stating the reasons for withholding consent."

We did not withhold consent to the filing of a brief in the name of Royal Netherlands Shipowners Association because our consent was never asked, although we are counsel for all libellants in the suit against petitioner, Black Diamond Steamship Corporation, as well as counsel for cargo claimants in the limitation proceedings instituted by petitioner, Skibs A S Jolund, the claims of our clients totaling nearly $3,000,000. We are also counsel for death claimants in the limitation proceedings. We did not know of the existence of this Dutch association until we received copy of its motion.

Charles S. Haight, Esq., who now appears as counsel for Royal Netherlands Shipowners Association, did ask our consent to the filing of a brief amicus in the name of Norwegian Shipowners' Association, for which, strangely enough, Eugene Underwood, Esq., now appears as counsel.

We withheld consent to the filing of a brief in the name of Norwegian Shipowners' Association—and

we would have withheld consent to the filing of a brief by Netherlands Shipowners Association if we had been asked—because in our opinion this case is peculiarly inappropriate for the intervention of amici curiae.

In our brief in opposition to the petitions for a writ of certiorari we pointed out that the Court of Appeals dealt only with facts; that it did not consider the burden of proof under the Fire Statute (46 U. S. C. sec. 182) or the Fire Exception of the Carriage of Goods by Sea Act (46 U. S. C. sec. 1304 (2) (b)); that it did not determine the petitioners' liability or non-liability to the respondent cargo owners and death claimants; that it did direct the District Court to make findings on the two most vital issues of the case which that court had not considered because of its findings on other issues which the Court of Appeals found were clearly wrong.

The motions with accompanying briefs now served upon us, disclose that the moving parties are not true amici curiae. They serve as adjunct counsel for the petitioners and seek, through repeated assertions, to persuade this Court that an important legal issue of worldwide interest was erroneously decided by the Court of Appeals when no such issue was ever considered.

In our briefs in the District Court and in the Court of Appeals we agreed that when either the Fire Statute (46 U. S. C. sec. 182) or the fire exemption of the Carriage of Goods by Sea Act (46 U. S. C. sec. 1304 (2) (b)) is applicable, the established authorities are clear that the burden is on cargo owners to prove that the loss of their property was causally

related to the negligence of managing officers of the vessel owner in the one case and of the charterer-carrier in the other.

Motion of Norwegian Shipowners' Association

It is asserted that this association includes in its membership almost all Norwegian shipowners trading in foreign commerce. Petitioner, Skibs A/S Jolund, owner of the "Black Gull," is a Norwegian shipowner and presumably a member of this association. Why it is felt that this association can more adequately present such arguments as may be available for the granting of a petition for certiorari than can the vessel owner and charterer who have some $3,000,000 at risk, does not appear.

Motion of Royal Netherlands Shipowners Association

This association asks this Court to receive its brief because, it is said, the owner and charterer of the "Black Gull" cannot speak for Dutch shipowners and carriers. It is asserted that this Dutch association can advance "a more complete argument on the issue of the construction of the statutes of the United States relating to fires on vessels" than can the petitioners, including Black Diamond Steamship Corporation, an American company.

This moving party asks the Court to receive what is asserted to be a brief amicus curiae but which includes argument (at pp. 9, 13-14) that the facts found by the Court of Appeals are erroneous. Although the evidence established, as the Court of Appeals found, that a Dutch governmental regulation

dealt with the proper stowage of napthalene, this Court is asked (at p. 9 of the brief) to accept the assertion of this moving party that the Court of Appeals is wrong and that there was no such Dutch regulation.

* * * *

We oppose the granting of the petitions for a writ of certiorari because, within the language of Rule 19 of this Court, "there are no special and important reasons therefor." While this Court can, of course, grant such petitions at its discretion, in a case such as the present where nothing but issues of fact are presented, this Court does not usually feel that a writ of certiorari is appropriate.

We object to the present motions because in our opinion they are not made by true amici curiae and intervention by amici curiae in this case is inappropriate in any event.

No United States shipowners or shipowners' associations nor any foreign vessel owners or owners' associations other than these moving parties, have felt that the decision in this case impinges upon their interests so that they should file briefs amici.

Respectfully submitted,

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